

ORIGINAL

In the Matter of the License of:)
) Case No. REA-2005-3
 WAYNE B. HARRIS,)
 License No. LRA-75,) **STIPULATION AND**
) **CONSENT ORDER**
 Respondent.)
)

WHEREAS, information having been received by the Idaho State Board of Real Estate Appraisers (hereinafter the “Board”) which constitutes sufficient grounds for the initiation of an administrative action against Wayne B. Harris (hereinafter “Respondent”); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

1. The Board may regulate the practice of real estate appraising in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.

2. Respondent Wayne B. Harris is a licensee of the Idaho State Board of Real Estate Appraisers and holds License No. LRA-75 to practice real estate appraising in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code.

3. Appraisals in the State of Idaho must comply with the minimum standards set forth in the Uniform Standards of Professional Appraisal Practices (“USPAP”).

4. Pursuant to Idaho Code § 54-4104(14), Respondent, as a licensed residential real estate appraiser, is restricted to appraising the following:

a. Complex one to four residential units having a transaction value of less than \$250,000, and

b. Noncomplex one to four residential units having a transaction value of less than \$1 million.

5. On or about February 3, 2001, Respondent prepared an appraisal report for the property located at 252 Sorensen Creek, Victor, Idaho (the "Subject Property").

6. Respondent's appraisal report for the Subject Property failed to meet the following requirements of USPAP Standards (2001):

a. The description of the neighborhood was very brief and not indicative of the nature of the single-family dwelling market in the area. There was no reference to the local economy and its dependence upon recreational activities at nearby Targhee Ski Area or the Jackson Hole, Wyoming, area, just across the mountains to the east, and there has been and is an ongoing significant land use change in that the former agricultural area is rapidly being converted to second home sites and corporate-owned designation recreation and vacation sites.

b. The site was not accurately described; it was not a "flat," "rectangular" parcel with public gas service. There were no concrete curb/gutter or sidewalks. The Subject Property was a wooded lot in the west foothills of the Grand Teton Range of mountains on the Idaho/Wyoming border. The view was not "Homes/Average" as reported.

c. The dwelling was described as having "no Basement," but the next column indicated that there was a 2,080-sq.ft. basement that was 100% finished, but the ceilings and walls were "Unfinished" and the floor was "Concrete." The room count then indicated that there was a family room, two bedrooms, one bath and a laundry room in the basement. In addition, the driveway was indicated to be "Concrete" in one place and "Gravel" in another.

d. On the sales comparison grid, several of the adjustments were

unsupported and inconsistent. The location for the Subject Property and each of the comparables was indicated to be “Average,” yet Comparables #2 and #3 were adjusted -\$25,000, presumably because they were located in the Jackson Hole area. The Subject Property site was indicated to be 5.6 acres and was compared to sites ranging from 2.8 acres to 80 acres. The adjustments were large, inconsistent and unsupported.

e. The adjustments for quality of construction were unsupported and inconsistent. The difference between “Good/Log” and “Good/Frame” was adjusted at +\$20,000 but the difference between “Good/Log” and “Avge/Frame” was \$220,000 with no explanation.

f. The basement adjustments were unsupported and inconsistent. None of the comparables had finished basement areas and two had no basement at all. The adjustments ranged from +\$81,000 to +\$159,600 with no explanation or support.

g. The garage adjustments were unsupported and inconsistent. A one-stall difference in garages was valued at ±\$5,500 but the difference between three stalls and no garage was only \$10,000.

h. Of the five comparables used in the appraisal, one was 32% larger in gross living area than the Subject Property and three were 53.3%, 29.1% and 42.7% smaller in gross living area than the Subject Property. Only Comparable #5 had similar gross living area and net adjustments that were within normal guidelines.

i. The address of Comparable #1 was misreported.

7. The appraisal of the Subject Property was a complex appraisal having a transaction value greater than \$250,000 which is beyond the scope of Respondent’s license as a licensed residential real estate appraiser.

8. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of real estate appraising, specifically Idaho Code §§ 54-4104(14) and 54-4107(1)(e), IDAPA 24.18.01.700 and USPAP (2001) Ethics and Competency Rules and Standards Rules 1-2(e)(i) and 2-1(a) and (b). Violations of these

laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice real estate appraising in the State of Idaho.

9. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his license as set forth in Section C below.

B.

I, Wayne B. Harris, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice real estate appraising in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraising in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of Five Hundred and No/100 Dollars (\$500.00) within thirty (30) days of the entry of the Board's Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of Eight Hundred Ten and No/100 Dollars (\$810.00) within thirty (30) days of the entry of

the Board's Order.

3. Respondent shall take a 15-unit National USPAP course within six (6) months from the date of entry of the Board's Order and shall take and pass any examinations given at the conclusion of the course. Respondent shall submit proof of attendance and proof that he passed any given examinations within 30 days of attendance. If no examinations were given at the conclusion of the class, Respondent shall submit a letter from the course instructor stating that no examinations were given. Said 15 hours of continuing education shall be in addition to any continuing education Respondent is required to obtain to maintain his license.

4. Respondent's License No. LRA-75 shall be placed on probation for a period of one (1) year or until Respondent has completed all requirements of Paragraphs 1 through 3 above, whichever occurs first. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of real estate appraising in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or

its agents.

5. At the conclusion of the one-year probationary period or when Respondent has completed the requirements in Paragraphs 1 through 3 above, whichever occurs first, Respondent may request from the Board reinstatement of License No. LRA-75. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation. The Board retains discretion to grant reinstatement of Respondent's license or to deny reinstatement and continue the period of probation.

6. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

7. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-4107. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.


c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the

Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

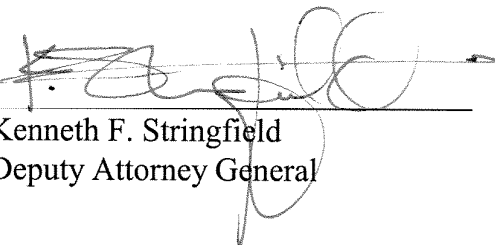
DATED this 3rd day of August, 2005.


Wayne B. Harris
Respondent

I concur in this stipulation and order.

DATED this 10th day of August, 2005.

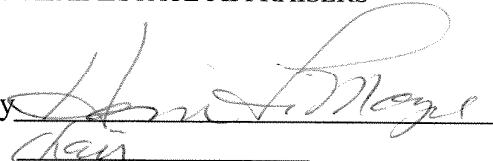
STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
Kenneth F. Stringfield
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-4106, the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 12 day of August, 2005. **IT IS SO ORDERED.**

IDAHO STATE BOARD
OF REAL ESTATE APPRAISERS

By 
Chair

CERTIFICATE OF SERVICE

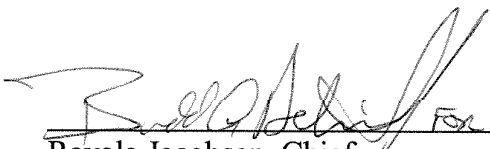
I HEREBY CERTIFY that on this 12th day of August, 2005, I caused to be served a true and correct copy of the foregoing by the following method to:

Wayne B. Harris
18 N. Yellowstone Highway
Rigby, ID 83442

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Kenneth F. Stringfield
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail



Rayola Jacobsen, Chief
Bureau of Occupational Licenses